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Media Contact:
Whitney Nichols
wnichols@co811.org
(303) 205-6372
www.co811.org

Colorado 811 Legislative Changes – Senate Bill 18-167

Implementation of enforcement authority, engineering location requests, one tiered membership.

Current Excavation Damage Prevention Law requires a person, before conducting an excavation project, is required to contact Colorado 811 (also known as Utility Notification Center of Colorado) by dialing 811 or visit www.co811.org to learn the location of underground facilities in their dig area. Currently, violations of the excavation damage prevention law are enforced exclusively through civil actions initiated by damaged parties to collect specified civil penalties and damages.

In 2016, the United States Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an adequacy evaluation of Colorado's enforcement of its excavation damage prevention law and determined that the enforcement is inadequate, which may eventually result in the withholding of federal funds from Colorado.

Senate bill 18-167 creates the underground damage prevention safety commission (commission) as an independent agency within the department of labor and employment. The commission has rule-making and enforcement authority regarding the excavation damage prevention law and is required to enter a memorandum of understanding with Colorado 811 to facilitate implementation and administration of the law. Colorado 811 is required to provide administrative support to the commission in performing its duties. A review committee of the commission initially determines whether a violation of the law has occurred and, if appropriate, recommends remedial action, potentially including a fine. Fines range from \$250 for a single minor violation within the previous 12 months to \$75,000 for a fourth major violation within the previous 12 months. The full commission is bound by the review committee's determination of facts but determines the final agency action regarding alleged violations. Fines are credited to the damage prevention fund, which the commission will use to develop educational programming, including by making grants, that is designed to improve worker and public safety relating to excavation and underground facilities.

Current law allows only an excavator to submit a location request to Colorado 811. The bill authorizes a licensed professional engineer designing excavation to submit a location request. The engineer is required to ensure that the engineering plans meet certain standards established by the American Society of Civil Engineers for defining the accuracy of an underground facility location. The notification association will collect a fee for each location request, which is deposited in the safety commission fund and used to pay the commission's expenses.



Current law creates two tiers of membership in Colorado 811. Tier 2 members are limited members with limited benefits and include certain special districts, local governments, cable television providers, and small telecommunications providers; Tier 1 members are full members with full benefits, and Tier 1 consists of all other owners and operators. If, after receiving a location request, Colorado 811 determines that a Tier 1 member owns or operates the underground facilities, they will directly contact the Tier 1 member to arrange for the marking of the underground facilities. If a Tier 2 member owns or operates the underground facilities, the excavator must contact the Tier 2 member directly to arrange for the marking of the underground facilities.

Effective January 1, 2021, all underground facility owners and operators are full members of Colorado 811 with full benefits, and excavators will no longer need to contact the owners or operators to arrange for the marking. All new underground facilities installed on or after January 1, 2020, must be electronically locatable when installed. Home rule local governments are not subject to the commission's enforcement authority, but the governing body of a home rule local government is required to either adopt a similar enforceable damage prevention safety program or waive its exemption and delegate its damage prevention enforcement authority to the commission. Information regarding the location of underground facilities is exempt from the "Colorado Open Records Act", pursuant to the existing exemption for specialized details of critical infrastructure.

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